

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

JOSE MARTINEZ, JR.,

Plaintiff,

vs.

ATTY YELLOWSTONE COUNTY—  
JACOB YERGER and JUDGE  
GREGORY R. TODD,

Defendants.

CV 20-62-BLG-SPW

ORDER ADOPTING  
MAGISTRATE’S FINDINGS  
AND RECOMMENDATIONS

The United States Magistrate Judge filed Findings and Recommendations on October 2, 2020. (Doc. 5.) The Magistrate recommended that Martinez’s case be dismissed with prejudice. (*Id.* at 6).

Pursuant to 28 U.S.C. § 636(b)(1), parties are required to file written objections within 14 days of the filing of the Magistrate’s Findings and Recommendations. Federal Rule of Civil Procedure 6(d) extends that period by 3 days when a party is served by mail. No objections were filed. When neither party objects, this Court reviews the Magistrate’s Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and

firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

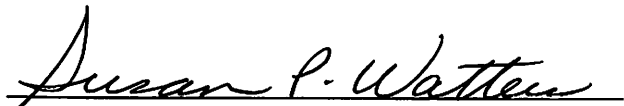
After reviewing the Findings and Recommendations, this Court does not find that the Magistrate committed clear error. Martinez filed the present action against a Yellowstone County Attorney and a Montana District Court Judge for their alleged failure in acknowledging his suffering in violation of civil rights. (Doc. 2 at 6). However, Judge Todd’s denial of Martinez’s motion is a judicial act protected by judicial immunity. *See Simmons v. Sacramento County Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003). Yellowstone County Attorney Yerger is similarly protected by prosecutorial immunity for his role representing the County in Martinez’s state case. *See Burns v. Reed*, 500 U.S. 478, 486 (1991). Therefore, Martinez’s claims against the two individually are incurably defected and must be dismissed with prejudice.

IT IS ORDERED that the proposed Findings and Recommendations entered by the United States Magistrate Judge (Doc. 5) are ADOPTED IN FULL.

IT IS FURTHER ORDERED that Defendant Jose Martinez, Jr.’s Complaint is DISMISSED WITH PREJUDICE. The Clerk of Court is directed to close this matter and enter judgment in favor of the Defendants pursuant to Rule 58 of the Federal Rules of Civil Procedure. The Clerk of Court is also directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal

Rules of Appellate Procedure that any appeal of this decision is not taken in good faith.

DATED this 26<sup>th</sup> day of October, 2020.

  
SUSAN P. WATTERS  
United States District Judge